

R E S O L U T I O N

BE IT RESOLVED, by the Board of County Commissioners of King County, in session regularly assembled, that:

WHEREAS, White River forms a part of the boundary line between the County of Pierce and the County of King, and at a point in King County near said boundary its waters heretofore divided, one part flowing down the White River channel into the Duwamish River and Elliott Bay and the other down the Stuck River channel into the Puyallup River and Commencement Bay, and in years past the volume of the flow has alternated between the two channels, thus, by washing away the roads, bridges, and other public property, at one time causing damage to the one county and at another time to the other county, but at the present time all the water flows into the said Stuck River channel, a condition the cause of which has been a source of dispute between the two counties, which dispute has resulted in litigation between them, to wit, a certain action brought in the Superior Court of the State of Washington for King County in which the County of Pierce is plaintiff and the County of King defendant, being case No. 29,672, and another action with the same title, being case No. 90,479; and,

WHEREAS, the condition existing in regard to the waters of said river brings the matter within the provisions of an act of the Legislature of the State of Washington, approved March 11, 1913, entitled:

"An Act authorizing counties to contract together for administrative and financial co-operation in the improvement, confinement and protection of rivers and the banks, tributaries and outlets thereof, whose waters flowing into and through such counties work damage by inundation or otherwise, authorizing the levy of taxes and the creation and disbursement of special funds for such purposes, delegating the power of eminent domain in aid of, and providing generally ways and means for the accomplishment of such purposes and the performance of such contracts."

the same being Chapter 54 of the Session Laws of 1913; and,

WHEREAS, it is deemed by the Board of County Commissioners of both counties to be for the public interests of their respec-

tive counties that the flow of said waters be definitely confined to a particular channel, which will carry all of them into Commencement Bay, in a manner to prevent such alternation and to prevent or lessen damage in the future; and

WHEREAS, the boards of county commissioners of King and Pierce Counties have, after extended negotiations between them, agreed upon a contract under the provisions of Chapter 54 of the Session Laws of 1913, and their respective attorneys have prepared such contracts in accordance with such previous agreement, in words and figures hereinafter set forth:

THEREFORE, be it resolved by the board of county commissioners of King County, that a contract between the two counties, in words and figures following:

(Here insert a copy of the contract)

be executed by King County by the signing thereto of the name of King County by the chairman of its of county commissioners and by the signature thereto of the three members of its board of county commissioners.

Done this 19th day of January, 1914.

ATTEST:

BYRON PHELPS,
Co. Auditor.

By N. M. WARDALL,
Deputy.

DAVIS McKENZIE

KRIST KNUDSEN

M. L. HAMILTON

(SEAL)

THIS AGREEMENT, entered into this 19th day of January, nineteen hundred and fourteen, between the County of King, a municipal corporation existing under the laws of the State of Washington, of the one part, and the County of Pierce, a municipal corporation existing under the laws of the State of Washington, of the other part, witnesseth:

Whereas, White River forms a part of the boundary line between the County of Pierce and the County of King, and at a point in King County near said boundary its waters heretofore divided, one part flowing down the White River channel into the Duwamish River and Elliott Bay and the other down the Stuck River channel into the Puyallup River and Commencement Bay, and in years past the volume of the flow has alternated between the said two channels, thus, by washing away the roads, bridges, and other public property, at one time causing damage to the one county and at another time to the other county, but at the present time all the water flows into the said Stuck River channel, a condition the cause of which has been a source of dispute between the two counties, which dispute has resulted in litigation between them, to wit, a certain action brought in the superior court of the State of Washington for King County in which the County of Pierce is plaintiff and the County of King defendant, being case No. 29, 672, and another action with the same title, being case No. 90, 479; and,

Whereas, the condition existing in regard to the waters of said river brings the matter within the provisions of an act of the legislature of the State of Washington, approved March 11, 1913, entitled:

"An act authorizing counties to contract together for administrative and financial co-operation in the improvement, confinement and protection of rivers and the banks, tributaries and

outlets thereof, whose waters flowing into and through such counties work damage by inundation or otherwise, authorizing the levy of taxes and the creation and disbursement of special funds for such purposes, delegating the power of eminent domain in aid of, and providing generally ways and means for the accomplishment of such purposes and the performance of such contracts."

the same being chapter 54. of the session laws of 1913; and,

Whereas, it is deemed by the boards of county commissioners of both counties to be for the public interests of their respective counties that the flow of said waters be definitely confined to a particular channel, which will carry all of them into Commencement Bay, in a manner to prevent such alternation and to prevent or lessen damage in the future; and,

Whereas, the boards of county commissioners of both counties have passed resolutions reciting the facts aforesaid and authorizing the execution of this contract:

Therefore, pursuant to said resolutions, the two parties contract together as follows:

(1) The object of this contract is twofold:

(a) To settle all disputes between the two counties in relation to said situation, and this is done by the said two actions, No. 29, 672 and No. 90, 479, being contemporaneously herewith dismissed, with prejudice, and each county does hereby release the other from all claims relating to the said situation to this date, and each county does hereby release the other county from all future claims for damages caused or to be caused by the flow of said waters, save and except such rights as either county may have against the other arising out of this contract; and the two counties do hereby agree together that the flow of said waters shall for all time be controlled so as to be confined to a channel carrying the same through the Puyallup Valley into Commencement Bay.

(b) To provide ways and means for such control and disposition of said waters.

(2) The two counties do hereby take advantage of and make applicable to this contract the provisions of said act of the Legislature, and as to any and all matters which are not specifically covered by this contract they do hereby adopt the said act of the Legislature as a part of this contract, it being, however, the intent not in any way or degree to conflict with or transgress said statute.

(3) The general scheme for the improvement of said river under this contract shall be as follows:

(c) The existing embankment erected by King County for the purpose of preventing the said waters from flowing towards the Duwamish River shall be strengthened and new embankments built wherever and whenever necessary in order to effectuate and perpetuate such prevention, and the channel of said river above said existing embankment shall be straightened, changed, deepened, and strengthened so far as may be necessary or advisable to perpetuate the present conditions; that is to say, so that all the waters shall continue to flow down the Stuck River channel and into the Puyallup River and Commencement Bay, which is hereby recognized as the true and natural course of flow for the same, and so as to prevent the said waters from ever again flowing towards the Duwamish River.

(d) A drift barrier or barriers may be erected at a point near the present embankment, or at such other place or places as may be deemed advisable for the purposes of collecting and holding drift coming down the river.

(e) The channel below said existing embankment shall be straightened, changed, and deepened, and the banks thereof shall be strengthened, so as to permanently confine the waters to the channel and prevent inundation of adjoining lands; but

the work contemplated by this subdivision (e) shall not extend below the west line of Section Eleven (11) Township 20 North, Range 3 East, W. M;

(f) The Logs, drift, and debris now in said river above and below said embankment shall be removed, if deemed advisable, the purpose being to prevent breaches in the banks and the creation of new channels thereby.

(g) Timber standing near the bank of the river above such embankment which is likely to be washed into the river and thus create new danger, shall be removed.

(4) A fund shall be created in each county, to be known as the "Inter-County River Improvement Fund", which is hereinafter, and may hereafter be, referred to as the "Construction Fund", the whole of which funds (except as otherwise herein provided) to be expended for the construction of the work aforesaid, and no part of the said fund in either county shall (except as hereinafter provided) ever be used for any other purpose. Each year for six successive years (including as one year the levies for the year 1913, which have been made in anticipation of this contract), there shall be raised by general taxation in the two counties (King County's share thereof being sixty (60) per cent., and Pierce County's share thereof forty (40) per cent. of the whole), the sum of two hundred and fifty thousand dollars (\$250,000) all of which shall go into said construction funds respectively, but in neither county shall the rate of taxation for any of the purposes of this contract exceed one mill on the dollar for any one year, and if this one mill limitation shall in any year reduce the contribution of either county to less than its full share of the total amount by this contract contemplated to be raised and put into the construction fund for that year, the other county's contribution for that year shall be reduced in due proportion. Of the first year's levy, or of the first moneys

which may be available under this contract, the sum of one hundred and ten thousand dollars (\$110,000) or so much thereof as may be necessary, shall be expended for the embankment work described in the foregoing subdivision (c) and the drift barrier described in the foregoing subdivision (d), and for such other work in King County as may be by a joint meeting found necessary. Other and further sums shall be expended in King County whenever and wherever necessary to carry out the purposes of this contract. ✓

Insomuch as it is intended that the work specified in the foregoing subdivisions (c) and (d) shall be built out of the 1913 tax levy or the first money available under this contract, and the result accomplished thereby will be to permanently confine the waters in the present channel in King County, so that they will flow towards and into Commencement Bay, and the greater portion of the remainder of expenditure of the construction fund will be devoted to caring for said waters in Pierce County, so as to minimize the working of damage there by them, and therefore Pierce County will be chiefly interested in the expenditures out of the subsequent levies therefor, the amount, to wit, the sum of two hundred and fifty thousand dollars (\$250,000), thus to be raised each year for six successive years, may for either one or more of said years, except the first year of actual accomplished levy, be decreased in such amount as may be specified in a resolution of the Board of County Commissioners of Pierce County, passed by unanimous vote, at a time sufficiently early in that year so that a certified copy thereof may and shall be served upon the County Auditor of King County in advance of the date of tax levy for that year. If, however, this method of providing for such decrease shall be held to conflict with said act of the Legislature, or be otherwise invalid in law, then it shall be rejected without in any way impairing the full force or validity of this contract in other respects.

If for any reason either tax levy shall fail entirely

for any one or more of said years, or for any year shall for any reason be less than the proper amount upon the basis of an aggregate annual levy of two hundred and fifty thousand dollars(\$250,000), whether such failure shall be due to injunction or other litigation or to any cause provided in this contract, or to any other cause whatsoever, the deficiency so created shall be made good in succeeding years as rapidly as the limitations of this contract and of said statute will permit, it being the intent, however, that in no event shall King County raise or be required to raise for or to put into its construction fund more than nine hundred thousand dollars (\$900,000) in all, nor shall Pierce County raise or be required to raise for or to put into its construction fund more than six hundred thousand dollars(\$600,000) in all, and, on the other hand, that the obligation is absolutely imposed by this contract upon King County to pay into its construction fund the sum of nine hundred thousand dollars (\$900,000), and upon Pierce County to pay into its construction fund the sum of six hundred thousand dollars (\$600,000), unless said obligation shall be reduced in amount by subsequent agreement between the two counties or by the completion of the work and the full accomplishment of the end intended by this contract at a less cost. (X) In this connection, it is recognized that only the actual doing of the work will develop how extensive and expensive the work must be to accomplish the result, and for that reason it is impossible to herein define in greater detail its definite features, and for the same reason it is intended that the details of the work shall be worked out by joint action of the two boards of county commissioners, as contemplated by said statute, and that the joint boards, in determining upon, controlling, and providing for the prosecution of the work and the expenditure of the construction funds, as authorized

by said statute, may determine the character and design and extent of each feature of the construction work, it being, however, the common purpose of the two counties that the plan of the work shall be reasonable from the standpoint of cost and that no unnecessarily expensive scheme shall be adopted or carried out. (X)

During the course of construction the work shall be protected and kept in repair out of the construction funds.

When said construction work shall have been completed, if there shall remain some part of said construction fund or funds unexpended, the unexpended balance (after adjustment of accounts between the two counties on the sixty per cent and forty per cent basis) may be transferred by the respective boards of county commissioners to the general funds of their respective counties.

(5) After the work of construction shall have been completed, a fund shall be created in each county to be known as the "Inter County River Improvement Fund," hereinafter referred to, and which may be hereafter referred to, as the "upkeep fund". The upkeep funds shall be created for the purpose of protecting and keeping in good order, repair, and efficiency the said work and of protecting the banks of said river from erosion and of confining the waters in their channel.

Unless otherwise agreed upon by the boards of county commissioners of the two counties, acting separately, said funds shall be fifty thousand dollars (\$50,000) in the aggregate, each year for the first twenty-five years following the completion of the construction work, and the same shall be contributed on the same basis as the construction funds, to wit, sixty per cent. by King County and forty per cent. by Pierce County; and if the upkeep fund created for any one year shall not all be used for that purpose,

the amount to be raised in the succeeding year shall be reduced accordingly.

After the expiration of said 25 year period, the obligation of upkeep shall continue on the same basis of contribution for 74 additional years, but the amount to be expended in any year for that purpose shall be determined by the joint action of the two Boards in joint meeting assembled, and the tax levy shall be on the basis so determined, but shall not exceed in any one year the aggregate sum of \$50,000.00.

If for any year the amount to be raised for upkeep shall (by agreement, evidenced by separate resolutions of the two boards of county commissioners) be over fifty thousand dollars(\$50,000), the excess over fifty thousand dollars (\$50,000) shall be contributed equally by the two counties.

(6) It is further mutually agreed that the special commissioner provided for by law shall be selected and designated in the following manner, to-wit: At the first joint meeting of the board of county commissioners which may be held after the execution of this contract, the said board of county commissioners for each county shall determine by lot as to which board shall have the primary selection of said special commissioner, who shall hold office until the first joint meeting of said board in each ensuing year, and thereafter the other county shall have the primary selection of said special commissioner, and so alternating from year to year. The board of county commissioners which shall be so authorized by lot to primarily select and designate the first special commissioner shall submit a list of the names of at least four (4) persons to the other board of county commissioners, and said other board shall thereupon designate which one of said four (4) persons shall be selected and designated as said special commissioner, and

the person so selected out of said four (4) names, as aforesaid, shall be the special commissioner to serve as such until the first joint meeting is held in the ensuing year. At the first joint meeting of the boards of county commissioners for the ensuing year, the board of county commissioners which selected from the four names proposed at the previous meeting shall submit a list of the names of at least four (4) persons from which the other board of county commissioners may select said special commissioner, and so on alternately during the life of this contract. The person so selected as such special commissioner as herein designated shall serve and act as such in the manner provided by law. If, however, the method provided in this section for the selection of the special commissioner shall be held to conflict with said act of the Legislature, or be otherwise invalid in law, then it shall be rejected without in any way impairing the full force or validity of this contract in other respects.

(7) The choice of a Chief Engineer of said construction work may only be made in joint meeting, and then only by the favorable votes of at least two members from each county. If within ten days after the date fixed for any first annual joint meeting a Chief Engineer of the construction work for the ensuing year shall not be so chosen, he may be chosen at the next joint meeting by an affirmative vote of five members of the joint board including the special commissioner. If, however, the method provided in this section for the selection of a Chief Engineer shall be held to conflict with said act of the Legislature or be otherwise invalid in law, then it shall be rejected without in any way impairing the full force or validity of this contract in other respects.

(8) For the purpose of the creation and disbursement

of the construction funds, this contract shall expire when the provisions of section (4) relating thereto shall have been complied with and by such compliance the construction work completed, but in any event not later than eight years after the date of the commencement of actual construction work, provided however, that if the construction work shall be delayed by injunction or litigation the period of such delay shall be excluded in the computation of the eight year period. In other respects, this contract shall be operative for the period as provided for in section (5) hereof.

(9). Should any legal liability hereafter arise in favor of any third person because of injuries to the property of such third person through the flow of said waters, either in King County or in Pierce County, such liability shall be borne solely by the County in which such injured property shall be situated. Nothing in this contract contained shall ever be construed as an admission of or an intent to create any claim in favor of any third person against either county or against said funds. The foregoing provisions of this section are not intended to refer in any manner or degree to damage done or caused in the doing of the work in this contract specified. It is the intent of this contract that claims for damages for change of channel, for building levees, for removing standing timber, and the like, shall be borne by the funds in this contract provided for, and claims for damage arising while the said construction work is in progress shall be borne out of the construction funds.

(10) Nothing in this contract contained shall be construed to prevent either county from hereafter, out of its own funds, but not out of either of said construction funds or upkeep funds, further caring for said river or the banks thereof by doing work thereon within its own corporate boundaries, such as strengthening

or rebuilding embankments or building new embankments, changing the channel, strengthening the banks, removing timber or debris, provided such additional work shall not in any way impair the efficiency of or do injury to the works provided for by this contract, and provided further, that the rights of the other county as fixed by this contract shall not be impaired thereby.

(11) Nothing in this contract contained shall prevent the use of any part or portion of said waters for irrigation, domestic, or power purposes, provided such use be in a manner provided for by law and in such way as not to weaken or in any way injure any of the improvements herein contemplated.

IN WITNESS WHEREOF, each county has caused its corporate name to be hereunto signed and caused the members of its board of county commissioners to sign the same, in duplicate, on the day herein first named.

(Signed) County of Pierce, State of Washington,

By

(W. H. Reed
Its Commissioners: (H. C. Martin
(G. H. Smith

(Signed) County of King, State of Washington,

By

(David McKenzie
Its Commissioners: (Krist Knudsen
(M. L. Hamilton

Copy of Contract

between

King and Pierce

Counties -

- Re -

Inter-County River Improvement

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(Signed) County of Pierce, State of Washington,

By
Its Commissioners: (W. H. Reed
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Its Commissioners: (David McKenzie
(Kirst Knudsen
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